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SOME REFLECTIONS ON THE STATE OF HUMAN RIGHTS IN EUROPE

I. Introduction

The issue of human rights often appears to be above politics and international relations. It is interpreted as a kind of supreme moral code immune to the vagaries of the moment, made up of a set of ethical commands to which all are required to declare allegiance. In fact human rights are part of contemporary political and legal discourse at both national and international level. They are considered as universal in a sense that they are almost universally accepted – at least in words or as ideal standards. Almost each state regularly proclaims its acceptance to international human rights norms[1] and charges of human rights violations are among the strongest charges that can be made in international relations.

The very idea of human rights inevitably involves certain individualism. Each person, simply as an individual human being, is particularly entitled to the treatment demanded by human rights. The fact that rights, and the claims they ground, are largely under the control of the right holder, implies further element of individualism as well.

So far human rights have hardly replaced considerations of power, security, ideology, and economic interest, nevertheless they have become a significant concern in international relations in recent years – a standard topic of talk and occasionally even action – in a variety of bilateral and multilateral contexts. Human rights have become an international issue in the post war era. We can also note the gradual strengthening of most international human rights regimes over the last fifty years. But even today

[1] The most widely known international document, cited with almost universal approval by both states and human rights organizations, is UN Universal Declaration of Human Rights (1948). In Europe this role has been played by the Council of Europe European Convention on Human Rights and Fundamental Freedoms with Additional Protocols (1950) and lately the Charter of Fundamental Rights of the European Union (2000).

promotional regimes are the rule. The only exceptions are the regional regimes in Europe and the Americas and workers' rights, and all three are 'special cases'. More or less, since the middle of the XX century the term 'international regimes', systems of norms and decision-making procedures accepted by states as binding in a particular issue area has been widely in use. Regime norms, standards, or rules (used interchangeably) may run from fully international to entirely national. International human rights norms, especially as expressed in the UN Universal Human Rights Declaration and Covenants, are relatively strong; they border on being authoritative international norms. Roughly half the states of the world are parties to the UN International Human Rights Covenants, and virtually all the rest (including most prominently, the United States) have either signed but not ratified the Covenants or otherwise expressed their acceptance of and commitment to these norms.

The global human rights regime is a relatively strong promotional regime composed of widely accepted substantive norms, largely internationalized standard-setting procedures, and some general promotional activity, but very limited international implementation, which rarely goes beyond information exchange and voluntarily accepted international assistance for the national implementation of international norms. There is rather ineffectual international enforcement. Such normative strength and procedural weakness is not accidental; it is the result of conscious political decisions.

Europe has developed what is probably the most refined system of judicial and political protection of human rights, involving both the domestic constitutional orders of states and the European Convention system. Each of these has its unique characteristics that ought to be uphold and permitted to play its rightful role. The Council of Europe, the European Union and the OSCE are concerned with ensuring that human rights are protected in a proper way. With regard to the same organisations, certain types of rights are covered by different instruments, each with its respective treaty body supervising compliance with the relevant obligations. This is due partly to historical reasons. All these instruments add to those that have been established at the world-wide UN level for the same rights. The ensuring result gives a fairly complex picture.

The real strength of the European regime lies in voluntary acceptance of the regime by its participating states. Formal procedures may support and strengthen national resolve, but in the final analysis they largely supplement national commitment and state acceptance; strong procedures are less a cause than a reflection of the regime's strength. In any international regime, strong procedures serve primarily to check backsliding, to apply pressure for further progress, to remedy occasional deviations, and to provide authoritative interpretations in controversial cases. These are hardly negligible functions; they are precisely what it lacking in the world-wide international regime. But strong international procedures rest ultimately on national commitment, which is both wide and deep in Europe.

II. Council of Europe

Protecting and promoting human rights has been the central to the role of the Council of Europe, the first European political organisation created four years after the United Nations. The status of the organization stated that any serious violation of human rights by member states constitutes grounds for suspension or exclusion. The European Convention on Human Rights and Fundamental Freedoms (herein after referred to as the Convention) an international treaty drawn up within the Council of Europe, was opened for signature in Rome in 1950 and entered into force in 1953. In 1961 came the counterpart of the Convention in the field of economic and social rights: the European Social Charter. Ratification of the Convention in 1953 has since become a condition of membership of the organization. Since its adoption the Convention has been amended and supplemented many times. Amending or additional protocols have been used in order to adapt it to changing needs and to developments in European society. In particular, the control mechanism established by the Convention was radically reformed in 1994 with the adoption of Protocol No. 11 which entered into force in 1998.[2] The Convention's importance lies not only in the scope of the fundamental rights that it protects, but also in the system of protection established in Strasbourg to examine alleged violations and ensure that states comply with their obligations under the Convention.

Thus the European Court of Human Rights (herein after the Court or ECHR) was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the Convention. The Court's main objective has been to ensure that the states complied with their obligations under the Convention and its additional protocols and its final judgements are binding. It is an international court with jurisdiction to deal with applications from individuals or states complaining of violations of the civil and political rights set out in the Convention. In 1998 a reform brought about the current single full-time Court and recognition of the right of the individual petition and the Court's jurisdiction then became compulsory. Because of that over 800 million Europeans now have direct access to the Court and the potential applicants include everyone else with the jurisdiction of the State Parties to the Convention. Since being set in 1959, the Court delivered more than 10,000 judgements. Every year it receives at least 40,000 new applications. Over the years it has been called upon to rule not only on very serious violations of human rights but also on questions related to the very essence of the rule of law and on many issues of society such as abortion, assisted suicide, strip-searching, domestic slavery, the right for persons not to be prevented from tracing their origins by the possibility of giving birth anonymously etc.

[2] Protocol No. 11 substituted a full-time single Court for the old system established by the 1950 Convention, namely, a Commission, a Court and the Committee of Ministers which played a certain "judicial" role.

Over fifty years of rulings by the Court have resulted in many changes to legislation and have helped to strengthen the rule of law. More than ever, the Court is today the guarantor of human rights in Europe – the conscience of Europe.

At present the system for the protection of human rights based on the Convention is under scrutiny. States are examining the Court. In February 2010, at the High Level Conference on the Future of the European Court of Human Rights, the representatives of the 47 Council of Europe Member States took the decisions which may bring welcome reform to relieve the Court's backlog of cases. Conversely, the decisions taken could undermine a body that has provided redress for the victims of human rights violations in Europe for over 50 decades.[3] The aim of the conference was to find a solution for a continuing overload of the Court. The conference adopted a joint declaration along with the plan of action setting the course for the future reform of the ECHR. According to the declaration, the reform measures should be based on the one hand on the respect of the right of individual application and, on the other hand, on the principle of subsidiarity of the Strasbourg system, in which the primary responsibility for securing human rights protection is on member states. The declaration aims at reaching a balance between the incoming cases and the settled once and to reduce the volume of approximately 120,000 outstanding cases as well as securing full and effective implementation of the Court's judgments. With the reference to the action plan it is important to emphasise that it includes recommendations to states to take measures to ensure enhanced respect for human rights and effective remedies for human rights violations at home. States ought to take more solid action to ensure greater respect for human rights and be obliged to provide effective domestic remedies when rights are violated. Better implementation of the Convention at national level would mean greater respect for human rights throughout Europe and would reduce the need for individuals to apply to the Court for redress. It can be assumed that fewer cases would be sent to the Court if the states implemented the Court's judgements by providing effective remedy and reparation and by taking steps, aimed at ensuring the violation is not repeated, and if states implemented not only judgments against them, but also standards developed in all relevant judgments against other states. It seems that there would also be fewer cases brought about issues on which the Court has already clarified how the Convention should be applied.[4]

If states fully respect human rights the Court would not be facing such an overwhelming backlog of cases. Additionally, the declaration also recommends measures that states, the Committee of Ministers[5] as well as the Court itself should take the steps to reduce inadmissible applications and repeat violations of the Convention,

[3] During its Chairmanship of the Council of Europe's Committee of Ministers, Switzerland organized a High level Conference on the Future of the European Court of Human Rights that took place in Interlaken on 18–19 February 2010. By issuing a joint declaration the representatives of the 47 Member States of the Council of Europe confirmed their intention to secure the long-term effectiveness of the ECHR.

[4] Approximately about half of the Court's judgments in the past 50 years are on so called "repetitive" cases.

[5] The Committee of Ministers is the main decision making body of the Council of Europe.

and ensure that the Court can render judgments on human rights more quickly where possible. However, it is hard to predict whether such a declaration will put reserved countries such as Russia – despite its recent ratification of the Protocol 14 to the Convention – under some pressure.[6]

In short, the future of human rights presents a number of challenges for the Council of Europe. To meet these demands, it has set up several co-operation programmes, working together with member states both new and old, nongovernmental organizations and professional groups.

III. European Union

The European Union was not designed to be a human rights organization and the treaties establishing the three European Communities in the 1950s hardly mentioned human rights in their broadest sense. The focus of concern of the founding Treaties was on 'peoples' rather than 'individuals'. The primary objective then was to lay foundations of an ever closer union among the peoples of Europe long divided by war and conflicts through initially economic integration. Although express reference to human rights was not originally made in the Community Treaties, the European Union has traditionally rooted its human rights obligations within its own legal order.[7] The EU Treaties have been revised on several occasions since the Treaty of Rome was signed in 1957. Each update has seen an enrichment of EU citizens' specific rights.[8]

[6] On January 15th, 2010 the State Duma of the Russian Federation voted in favor of the draft law ratifying Protocol No. 14 to the European Convention on Human Rights. The vote has cleared the way once and for all for the Protocol, already ratified by the other 46 State Parties, to enter into force. Russia was the last to ratify, after four years of hesitation. The delay was widely interpreted as a blocking tactics, undermining the Court from functioning effectively, which would mean undermining the cause of human rights in Europe. Some independent Russian lawyers comment the ratification as a decision favored at the highest level by President Medvedev in order to improve the rule of law in Russia, since the case law of the Court in mandatory upon national legal systems. Protocol 14 to the Convention brings forward of a key reform to the ECHR. It aims to streamline the Court's process for reviewing cases that come before it. It also allows the Council of Europe's Committee of Ministers to bring states before the Court for failing to implement the Court' judgments. This aspect of the reform could prompt Russia to implement fully Court judgments on abuses in Chechnya. More that 115 such rulings have held Russia responsible for enforced disappearances, extrajudicial executions and torture, and for failing to investigate these crimes properly.

[7] The first reference to human rights in one of the Community Treaties was the Single European Act, 1986 in its preamble /OJ 1987, L 169/1.

[8] The EU Treaty, before the Treaty of Lisbon entered into force, already had covered the four internal market freedoms, namely free movement of goods, services, people and capital. It also baned all discrimination based on nationality, gender, race, ethnic origin, religion, disability, age or sexual orientation. It enshrined the right of residence throughout the EU for all its citizens. And it allowed them to vote and stand in local and European elections in every Member State. In addition, the preamble to the Treaty of Amsterdam, which came into force in May 1999, refers to the 1961 Council of Europe Social Charter and the 1989 Community Charter of Fundamental Social Rights of Workers.

Parallel to the European Communities Treaties' the judicial branch of them was established.[9]

The Court of Justice of the European Union (herein after referred to as CJEU) can be distinguished as the first EU body to stress the need to respect the fundamental rights of the individual. Its extensive case-law has set standards of protection for citizens. It provides for example for the right to a fair trial, to an effective judicial appeal, privacy, free association, property, professional secrecy and free expression. The CJEU has ruled that all European institutions must respect fundamental rights, as must national authorities when they are implementing EU law.

As integration deepened and as the Communities came to have more far-reaching effects on the daily lives of citizens the need for explicit mention of fundamental rights was recognized. The CJEU developed this idea as the Communities have not been bounded by the Convention in the same way as the subscribing member states. EU has not been itself a signatory of the Convention.

A considerable step in integrating human rights and democratic principles into the EU external policies was taken by the EU with the entry into force of the Treaty on European Union in 1993. Article 6 of the TEU is the key provision as far as fundamental rights are concerned. It states that one of the objectives of the EU's Common Foreign and Security Policy is the development and consolidation of "democracy and the rule of law, and respect for human rights and fundamental freedoms". Article 7 of the same Treaty introduced a political mechanism in order to prevent violations of the principles mentioned in Article 6 by the Member States. The Treaty of Amsterdam, which came into force in 1999 marks next significant step forward in integrating human rights into the EU' legal order. A new Article 6 was added, which reaffirmed that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

The Charter of Fundamental Rights of the European Union (herein after the Charter) arose out of a debate on human rights in the EU, started in 1998 to mark the 50th anniversary of the UN Universal Declaration of Human Rights, and was finally proclaimed and acquired an important position at the Niece European Council Summit in December 2000. Nice summit did not make the Charter legally binding by incorporating it in the Niece Treaty, as there was too much opposition. Instead the Charter received a form of a political declaration, described as a "solemn proclamation". Besides, ten years ago the question of its future role was very controversial. It was designed not to define new fundamental rights but to codify the rights that the EU has to respect. To that end, it contains not only the civil and political rights that are established in

[9] The Court of Justice of the European Union was originally established in 1952 as the Court of Justice of the European Coal and Steel Communities, and renamed as the Court of Justice of the European Communities in 1958. With the entry into force of the Treaty of Lisbon in 2009, the Court changed to its current name Court of Justice of the European Union and comprises formally of the Court of Justice along with its two subordinate chambers; the General Court (formerly the Court of First Instance) and the Civil Service Tribunal.

the ECHR but also those that have derived more broadly from the evolution of society, social progress and scientific and technological evolution.[10] The additions to the Convention found in the Charter are not new in Europe; they are rights and freedoms guaranteed by other EU or Council of Europe instruments or established by the case law. The Charter is, therefore, a codification and a clarification of what already exists rather than an aspiring wish list. The Charter was embedded as a part two in the EU constitutional project that fell at the hurdle of popular support in 2005. But, the apparent popular reasons for not supporting the Constitutional Treaty in France and Netherlands were contradictory. Some voted no because they wanted 'less Europe', some because they wanted 'more'. The Lisbon Treaty, the latest institutional reform treaty of the EU, went into effect on December 1st, 2009.[11] It incorporated the Charter into the EU Treaties and gave it the binding legal force – for the majority of EU countries that have not negotiated an opt-out in the form applying to the UK.[12] The way in which the Charter has been incorporated into EU treaty law sends, to some extends, a signal as to the way human rights might feature in the future of the EU.

Nevertheless, a number of interesting problems can be traced here. Considering the complexity of this issue I will only refer very vaguely to a couple of points in dispute. As it was mentioned above the Lisbon Treaty makes the Charter legally binding for all EU institutions and member states, but Poland, Czech Republic, and the UK who negotiated "opt-out" from applying the Charter. Therefore, a human rights legal order that will be parallel to that of the Convention has been established. There is no doubt that the Convention has been an extremely successful regional human rights instrument, so in this context, can the Charter really compete with it or will it be practically redundant? Further on if there will take place the involvement of both the CJEU and the ECHR, which decision/precedent should prevail? The above mentioned issues are particularly relevant in the context of the fact that Lisbon Treaty has introduced a single legal personality for the Union that enables the EU to conclude international agreements and join international organizations, including the Council

[10] The Charter affirms the existing rights on which the European Union is founded, and which it respects in accordance with Article 6 of the TEU. It contains various categories of rights:

- Rights and freedoms and procedural guarantees, as they result from the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the common constitutional tradition of the Member States;
- Rights connected with European citizenship, which are found in particular in the second part of the Treaty establishing the European Community (TEC), entitled "citizenship of the Union";
- Economic, social and cultural rights which correspond to provisions of employment and social law;
- "modern" rights intended in particular to meet challenges connected with current and future developments in information technology and genetic engineering.

[11] The document was signed by the Heads of States or government of the 27 EU member countries in December 2007. The process of completing the ratification by each individual member country lasted nearly two years, concluding with the ratification by the Czech Republic on November 3rd, 2009. The Lisbon Treaty reforms the EU's governing institutions and decision-making process to enable the EU to operate more effectively. The treaty grew out of the Treaty that foundered after French and Dutch voters rejected it in referendum in 2005.

[12] Article 6 of the Lisbon Treaty.

of Europe. The Council of Europe is already encouraging the EU to accede to the Convention. By doing so, the EU would subject itself to the authority of the ECHR. Unless properly implemented with respect for the principle of subsidiarity, the EU's accession to the Convention could lead to a "United States of Europe" with many of the same federal and state constitutional conflicts that the United States of America has experienced and debated for decades. So far, however, it is next to impossible to formulate competent opinion on this issue. Practical solutions will be developed in the due process.[13]

In sum the Charter contains provisions on civil, political, social and economic rights. Put together, these are intended to ensure the dignity of the person, to safeguard essential freedoms, to provide a European citizenship, to ensure equality, to foster solidarity, and to provide for justice. The number and range of rights that are listed is comprehensive. In addition to provisions which most charters and bills of rights hold and which pertain to such clauses as the right to life, security, and dignity, there are numerous articles that seek to respond directly to contemporary issues and challenges.[14] There is no doubt that the Charter provides the Union with a "more evident"[15] framework of protection of the individuals before the public authorities within the European context, after over forty years – since the Stauder Case[16] – of full

[13] The exact terms of the accession, some of which may require a further protocol to the ECHR or an accession treaty, will have to be agreed upon by all Council of Europe member states, as well as the EU. The EUs negotiations with the Council of Europe are expected to begin in July 2010 and continue into 2011. An essential aspect of the accession negotiations will be the need to ensure that Council of Europe officials and the ECHR respect the sovereignty of EU member states, all of which have national constitutional and legislative human rights safeguards. Also, respect must be given to the Charter provisions and CJEU decisions implementing those provisions. Finally, Council of Europe officials and the ECHR must be open to the views of members of the legal community from nations who will be impacted by EU accession to the Convention.

[14] For instance, there are clauses on protection of personal data (Article 8), freedom of research (Article 13), protection of cultural diversity (Article 22), protection of children (Article 24), right to collection bargaining (Article 28), and protection of environment (Article 37). The Charter also contains a right to good administration (Article 41). It contains several articles on non-discrimination and equality before the law. Article 21, section 1 states that: "Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of national minority, property, birth, disability, age or sexual orientation shall be prohibited". Section 2 contains s clause banning discrimination on grounds of nationality.

[15] As the European Council of Cologne asked for at its meeting in Cologne on 3 and 4 June 1999 to consider major issues for the future following the entry into force of the Amsterdam Treaty. At that meeting the European Council had adopted Resolution that included Annex IV: *European Council Decision on the Drawing Up a Charter of Fundamental Rights and the European Union.* This Annex stated that: "Protection of fundamental rights is a founding principle of the Union and an indispensible prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union's development, to establish a Charter of Fundamental rights in order to make their overriding importance and relevance more visible, to the Union's citizens...". Report by the Council, 8460/1/91 REV in: Ch. Hill, K.E. Smith (eds.), *European Foreign Policy. Key Documents*, Routledge, New York 2000.

[16] For the first time, the European Court of Justice stated that it ensures the respect of fundamental human rights enshrined in the general principles of Community Law. In that case, it was judicially stated that fundamental human rights were enshrined in the general principles of EC law. Court of Justice of the

confidence in the leading role, played by the jurisprudence of the Court of Justice of the European Communities. This new normative catalogue of fundamental rights implies one more instrument of protection which has to find its own place with regard to the protection afforded by the national Constitutions and the international agreements on human rights, particularly the ECHR, which already are a privileged source of inspiration for CJEU.

It is the main objective of the general provisions of the Charter to clarify which is that place and the relationship with those other levels of protection as managed their supreme interpreters (i.e., the Constitutional – or Supreme – Courts of the Member States of the Union and the European Court of Human Rights). Furthermore, it is also of great importance that the European Union decided to address the issue of racism and discrimination through the Charter.[17]

However, there are also other aspects of the European states activities that are not subject to effective human rights control at the level of the European Union and Council of Europe human rights mechanisms. Given the consistent enlargement of the EU responsibilities, it becomes all the more imperative that they be accompanied by essential measures, at the EU, as well as at the Council of Europe level, to ensure the promotion and protection of human rights.

As the EU continues to grow in importance, both as a force in international relations and as ever more important influence over the lives of those who live within its borders and those living in countries which aspire to membership, its approach to human rights is becoming increasingly significant. So far, however, its human rights policies are far from fully comprehensive. In the *Human Rights Agenda for the European Union for the Year 2009* we find the comment that "the Union's present approach to human rights tends to be splintered in many directions, lacks the necessary leadership and profile, and is marginalized in policy-making". It has also been stressed that, despite the very considerable amounts of energy and resources devoted to these issues by the EU, "the fragmented and hesitant nature of many of its initiatives has left the Union with a vast number of individual policies and programmes but without a real human rights policy as such". One may agree or not with the above statement, nevertheless it is important to point out the role of the European National Human Rights Institutions (herein after NHRI or National Institutions).[18] The annual

European Communities, Judgement of 12 November 1969, *Erich Stauder v. City of Ulm, Socialamat*, Case 29/69, in: *Reports of Cases before the Court 1969*, S.419.

[17] Art. 21. Among others, it reaffirms important steps to outlaw discrimination on the grounds of gender, race and color.

[18] Since the 1990s the number of National Human Rights Institutions (NHRIs or 'national institutions') has been growing in Europe. The aim of these institutions is to help implement international human rights at the national level and narrow the gap between government and civil society. First European Meeting of National Human Rights Institutions took place in Strasbourg in November 1994. The purpose of this European Meeting of National Institutions for the Promotion and Protection of Human Rights was to put forward practical proposals in order both to intensify cooperation among national institutions and to identify priorities and strategies for harmonizing European efforts to combat racism and xenophobia. In 2002 the Council of Europe granted the European Coordinating Group for National Institutions observer status in the human rights steering committee of the Council of Europe. This was perceived as a natural

dialogue between the UN Human Rights Commission and National Human Rights Institutions is one of the concrete, continuing outcomes of the UN World Conference on Human Rights in 1993. The World Conference recognised the need for practical measures to implement international human rights norms and standards on the domestic level. It identified National Institutions as good mechanisms to achieve that. National Institutions are very close to the problems that people face and they are often in a good position to suggest ways and means to remedy both, individual and systemic human rights violations. There are four particular issues that have preoccupied NHRIs during the last decade: the impact on human rights of the fight against terrorism, the increase in racially motivated attacks, the obligation of the states to fulfil the rights of people with disabilities and threats to the independence of National Institutions. It must be accentuate here that the issue of the impact of the fight against terrorism on human rights protection has been lately of particular concern to National Institutions. They do agree that terrorism violates human rights but correctly observe that it will not be eliminated by other human rights violations.

Further on, in their opinion some of the laws introduced during the first decade of the XXI century in the European countries with the aim of combating terrorism give rise to concern and criticism that they fail to meet international human rights standards. NHRJ have raised these concerns in relations to the new intrusive methods of investigation, wider access to surveillance and exchange of sensitive personal data between states, the extension of detention without formal charges, arbitrary limitations in the freedom of speech and freedom of assembly and so on. On numerous occasions National Institutions have been warning that initiatives aimed at combating terrorism must not encroach on such fundamental rights and liberties through restrictions that are inconsistent with the objective of protecting human rights. International human rights norms, as they are known today, were developed in response to the horror of genocide, war and other forms of conflict. In fact, they recognise that there can be a delicate balance between protecting the interests of broader society and protecting the rights of individuals. Likewise National Institutions affirm that the legitimate fight against terrorism can be and must be conducted with full respect for international human rights norms.

IV. Conclusions

Despite of its active role in the field of human rights, the EU is not always able to counter still considerable amount of negative developments. This means that continued efforts are necessary to improve the EU's human rights policy with a view

development in the good dialogue between the Council of Europe and national institutions, which was reinforced by the 1998 resolution establishing the roundtable between the Council and the National Institutions. More on this topic: G. de Beco, *National Human Rights Institutions in Europe*, "Human Rights Law Review" 2007, 7(2), pp. 331–370.

to realising its main objective: raising the level of human rights protection around the world. First this requires simultaneous attention for both the internal and external dimension of the EU's human rights policy. Second, it is important to fine-tune a multidimensional approach to international action, which takes into consideration all instruments at the EU' disposal, such as, *inter alia*, political pressure, dialogue with interested countries, technical assistance, country resolutions and when necessary sanctions.

In the view of the above considerations, we may accept the notion that the future of human rights in the EU and the credible role of the EU in promoting human rights in the world will depend to a large degree, on how the EU now defines its borders. The EU cannot afford to let its future borders to be defined by prejudice. At the same time, it needs to be realistic about how far it can expand while still maintaining its effectiveness and integrity.

There are various opinions and speculations with regard to the presence of the Charter in the Lisbon Treaty being the constitutionally-relevant document. One interpretation is that a covert EU intention is extremely political, and futuristic i.e. that the Charter has become a bill of rights in a new federal state of Europe founded on the EU. This notion is one mainly adhered to by radical Eurosceptics. Whether we like it or not, it is certainly true that the EU has developed in leaps and bounds regarding its political, as opposed to merely economic, ambitions, and further EU political cohesion is virtually inevitable.

That may lead us to the final conclusion of these reflections that the key to greater effectiveness of the EU role in the area of human rights lies in encouraging certain movements, rather than seeking new formalistic structure and declaratory principles. This surely means ultimately making the Charter a legally binding instrument in the EU law with no exceptions or national opt-outs. So far, the Lisbon Treaty provides for a "Bill of Rights for Europe". In a short cross reference, under Article 6 of the Treaty, the EU recognises the rights, freedoms, and principles set out in the Charter. This means that the Charter is becoming a core element of the EU's legal architecture, except in the Czech Republic, Poland and the UK, which have submitted protocols limiting the justifiability of the Charter in certain areas. However, the EU cannot afford to allow member states to create first and second-class citizens in terms of fundamental rights – that way would lead to an end of a meaningful union. It may be time to ask what place member states that are not prepared to sign up to the full array of fundamental rights and freedoms guaranteed by EU law, and in particular the Charter, have in the future of the EU.